

ORIGINAL

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07 OCT 16 PM 1:39

CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BY:

POL

DEPUTY

1 ROBIE & MATTHAI
A Professional Corporation
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6 Attorneys for Plaintiff PROGRESSIVE WEST
INSURANCE COMPANY
7

8 UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 '07 CV 1999 JAH (POR)

11 PROGRESSIVE WEST INSURANCE)
12 COMPANY, an Ohio corporation,)

CASE NO.:

13 Plaintiff,

COMPLAINT FOR
DECLARATORY RELIEF

14 vs.

15 BUN BUN TRAN, LEONEL
ARRELLANO,

16 Defendants.
17

18 Plaintiff Progressive West Insurance Company ("Progressive") alleges:

19 1. Plaintiff is and was at all times mentioned a corporation incorporated
20 under the laws of the State of Ohio and having its principal place of business in the
21 State of Ohio.

22 2. Defendant Bun Bun Tran ("Mr. Tran") is and was at all times mentioned
23 an individual residing in the State of California, County of San Diego.

24 3. Defendant Leonel Arrellano ("Mr. Arrellano") is and was at all times
25 mentioned an individual residing in the State of California.

26 4. The jurisdiction of this Court over the subject matter of this action is
27 predicted on 28 U.S.C § 1332. The amount in controversy exceeds \$75,000.00,
28 exclusive of interest and costs. In determining the amount in controversy for

1 jurisdictional purposes, general, special, and punitive damages are to be considered if
2 recoverable. *See, e.g., Watson v. Blankinship*, 20 F.3d 383, 386-87 (10th Cir. 1994);
3 *Smith v. Bally's Holiday*, 843 F. Supp. 1451 (N.D. Ga. 1994); *Srour v. Barmes*, 670
4 F.Supp. 18 (D.D.C. 1987). Based on the facts alleged below, it is legally certain that
5 defendant's claim against Progressive exceeds \$75,000.00. Therefore, although
6 Progressive disputes liability, Progressive asserts that the amount in controversy
7 exceeds \$75,000.00 and that this Court has jurisdiction over this action.

8 5. Venue is proper, as the Southern District of California is the district in
9 which a substantial part of the events or omissions on which the claim is based
10 occurred.

11 6. For the policy period May 30, 2006 to November 30, 2006, plaintiff
12 Progressive insured defendant Leonel Arrellano ("Mr. Arrellano") under California
13 Motor Vehicle Policy number 16558999-00. The policy contained a per-person
14 bodily injury liability limit of \$15,000.

15 7. On November 18, 2006, at 1:05 a.m., defendant Bun Bun Tran was
16 driving his automobile eastbound on Juniper Street in the City of San Diego.

17 8. At the same time, Defendant Mr. Arrellano was driving his pickup truck
18 south bound on Commonwealth Avenue in the City of San Diego.

19 9. Mr. Arrellano's pickup truck collided with Mr. Tran's automobile. The
20 subsequent traffic collision report assigned fault to Mr. Arrellano for disregarding a
21 stop sign.

22 10. As a result of the collision, Mr. Tran suffered serious injuries including
23 head trauma described as a subarachnoid hemorrhage and a ruptured spleen. Mr.
24 Tran reportedly remains comatose.

25 11. Mr. Tran's medical bills are believed to be in excess of \$700,000.00.

26 12. Following the accident, Mr. Arrellano was arrested by the San Diego
27 Police Department for driving under the influence of alcohol, driving without a
28 licence and leaving the scene of an accident. In February 2007, Mr. Arrellano pled

1 guilty to violation of Vehicle Code §20001(a) (leaving scene of an accident) and
2 §23153(b) (driving under the influence of alcohol and causing bodily injury to
3 another.) Mr. Arrellano remained in the San Diego County Jail until June 2007, when
4 he was sentenced to 6 years in a California prison.

5 13. On or about January 26, 2007, attorney Anh Quoc Duy Nguyen wrote
6 Progressive demanding that Progressive tender its liability policy limits within fifteen
7 (15) days. A copy of attorney Nguyen's demand letter is attached as Exhibit 1.

8 14. Plaintiff is informed and believes that at the time Attorney Nguyen sent
9 his January 26, 2007 letter, he was not legally representing Bun Bun Tran, but,
10 instead, was representing Mr. Tran's mother. Plaintiff is further informed and
11 believes that Mr. Tran's mother was not then guardian ad litem of Mr. Tran. As a
12 result, Attorney Nguyen had no legal authority to settle the claims of Mr. Tran, nor
13 did he have legal authority to release claims of Mr. Tran against any tortfeasor.

14 15. Attorney Nguyen's demand did not offer a release or dismissal in
15 exchange for payment of the insurance benefits, and, indeed, it specifically was
16 subject to the condition precedent "of convincing me [Nguyen] that there are no other
17 responsible parties, whether insured or not, causing this accident. If I am convinced,
18 I will state as much in a letter. If I am not convinced, I will never state as much in a
19 letter and there will be no settlement."

20 16. It was legally and factually impossible to convince Attorney Nguyen that
21 there were no other responsible parties for causing this accident, given the facts and
22 circumstances of the accident, and that Patricia Cole in fact paid Bun Bun Tran
23 \$300,000 to settle the liability claim against her arising from this accident in July
24 2007.

25 17. As a result of the above condition precedent, attorney Nguyen's demand
26 was not an offer to settle within the policy's limits. Rather, the condition precedent
27 of "convincing" Nguyen was outside of the policy and its stated limits.

28 18. In response to attorney Nguyen's letter, Progressive offered its policy

1 limits on February 2, 2007, within seven days of the demand. Attorney Nguyen
2 rejected the offer and referred Mr. Tran's claim to attorney Christopher Angelo.

3 19. On or about May 8, 2007, attorney Angelo filed a lawsuit on behalf of
4 Mr. Tran (through his guardian ad litem, Le Thi Nguyen), entitled *Bun Bun Tran vs.*
5 *Arrellano, et al.*, San Diego Superior Court Case No. 37-2007-00065432-CU-PA-
6 CTL. The complaint alleges causes of action for negligence and negligence per se
7 against Mr. Arrellano.

8 20. The correspondence, pleadings and discovery proceedings in the above
9 captioned lawsuit make clear that attorney Angelo intends to obtain a judgment
10 against Mr. Arrellano and then sue Progressive on behalf of Mr. Tran for breach of
11 contract and breach of the implied covenant of good faith and fair dealing for failure
12 to settle Mr. Tran's claim within policy limits.

13 21. Attorney Angelo has accused Progressive of misconduct and claims that
14 Progressive's failure to accept Attorney Nguyen's January 26, 2007 policy limits
15 demand has eliminated the stated limits of the policy. As a result of the erroneous
16 contention that Progressive has "taken the lid off its policy" by not accepting
17 Attorney Nguyen's conditional demand of January 26, 2007, Mr. Tran claims, *inter*
18 *alia*, that a conflict of interest has arisen between Progressive's defense counsel and
19 Mr. Arrellano, that Mr. Arrellano should stipulate to a multi-million dollar judgment
20 and that Progressive should bear liability for these extracontractual claims. A copy of
21 the letter of June 28, 2007, from Mr. Tran's attorney is here attached as Exhibit 2.
22 Progressive denies and disputes these allegations and contends it has not rejected a
23 settlement within policy limits which would lead to such consequences claimed by
24 defendant Mr. Tran.

25 22. An actual controversy has arisen and now exists between the parties
26 relating to the legal rights and duties of plaintiff and defendants under the involved
27 policy of insurance, for which plaintiff desires a declaration of rights.

28 23. A declaratory judgment is necessary in that plaintiff contends it

1 discharged its obligations under the insurance policy and in accord with California
2 law and that its conduct in response to the letter of attorney Nguyen (Exhibit 1) did
3 not eliminate or jeopardize the \$15,000 policy limits available on the contract at
4 issue.

5
6 Wherefore, plaintiff prays for a declaratory judgment against defendants as
7 follows:

- 8 1. That the Court declare the respective rights and duties of plaintiff and
9 defendants under the involved policy of insurance;
10 2. That plaintiff be awarded its costs, expenses and attorney fees incurred
11 herein; and
12 3. For other such relief as the Court deems just and proper.

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14 DATED: October 15, 2007

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ROBIE & MATTHAI
A Professional Corporation

By: _____

JAMES R. ROBIE
KYLE KVETON
RONALD P. FUNNELL
Attorneys for Plaintiff PROGRESSIVE WEST
INSURANCE COMPANY

LAW OFFICES OF
ANH QUOC DUY NGUYEN & ASSOCIATES

Branch Offices:

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SAN DIEGO, CA 92126
PHONE: (619) 284-0800

15622 BROOKHURST STREET
WESTMINSTER, CALIFORNIA 92683

PHONE: (714) 531-8181
FAX: (714) 531-9397

RESPOND TO:

• WESTMINSTER OFFICE
□ SAN GABRIEL OFFICE
□ SAN DIEGO

January 26, 2007

Tiara Foster, Claims Representative
Progressive Insurance Company
6131 Orangethorpe Avenue, Suite 300
Buena Park, CA 90620
714.736.6300 general phone
714.736.6321 direct
714.736.6308 fax

Via Certified Mail with Return Receipt
and Fax to: (714)736-6308

Re: My Client:
Your Insured/Defendant:
Date of Accident:
Your Claim No.:

Bun Bun Tran
Leonel Arrellano
November 18, 2006
060409287

Dear Ms. Foster:

Please be advised that I represent Bun Bun Tran, who was seriously injured because of your insured running a stop sign. Thereafter, your insured fled from the scene. He has been arrested and is currently awaiting a criminal hearing in February of this year. My client has been hospitalized at UC San Diego, Floor 8 East, Room 812A, in a comatose condition since November 18, 2006. I understand that you have learned about his condition and the facts behind this accident from Esurance, the auto insurance company of Bun Bun Tran. You therefore know that the medical expenses are approaching \$700,000 and Progressive has insufficient amounts of liability insurance.

My client is represented by his mother/guardian, Le Thi Nguyen. My client is hereby willing to be responsible for any and all medical and other liens so long as Progressive tenders all of its liability limits within 15 days from the date of this letter subject to the further condition precedent of convincing me that there are no other responsible parties, whether insured or not, causing this accident. If I am convinced, I will state as much in a letter. If I am not convinced, I will never state as much in a letter and there will be no settlement. Please also tell me, since it may bear on settlement, whether or not your insured received liquor at a Chili's restaurant shortly before the accident, and if so, which Chili's restaurant. We understand that Chili's was your insured's employer at the time of the accident.

Very truly yours,


Anh Q. D. Nguyen

P2108
J2

ANGELO & DI MONDA

A LIMITED LIABILITY PARTNERSHIP

1721 NORTH SEPULVEDA BOULEVARD
MANHATTAN BEACH, CALIFORNIA 90266

TELEPHONE: (310) 939-0099
FAX/MAIL: (310) 939-0023

CHRISTOPHER E. ANGELO
JOSEPH DI MONDA, A.I.A.

June 28, 2007

James O. McLaughlin
Winet, Patrick & Weaver
401 West A Street, Suite 1400
San Diego, CA 92101
619.702.3902
619.702.5432 fax

Re: *Bun Bun Tran v. Leonel Arrellano, et al.*
Your File No. P21084

Dear Mr. McLaughlin:

I assume that you have requested and reviewed all correspondence exchanged between the two claims adjusters from Progressive and the law office of Anh Nguyen. Pursuant to that review by you, I assume you and your primary client, Mr. Arrellano, are ready to consider demanding certain settlement parameters, as follows:

1. Leonel Arrellano and his liability insurer, Progressive, stipulate to Arrellano's liability and as to the amount of reasonable damages (assuming a reasonable stipulation) relative to the above matter.
2. In exchange, my client agrees not to execute any judgment against Mr. Arrellano, so long as Progressive consents to this arrangement without any reservation. Future wrongful death claims will also be waived.
3. Progressive agrees to pay the entirety of that stipulated judgment, subject to any offset or reimbursement from cross-complaint recoveries achieved by your firm against the City of San Diego and/or Chili's Grill & Bar.
4. You will not have the benefit of any cross-complaint recovery against co-defendant Patricia Cole because a settlement has been achieved between attorney Anh Nguyen and First American in light of their very professional conduct.

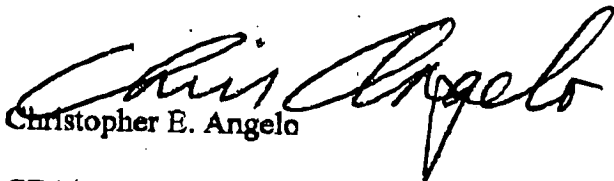
JUL 02 2007

ANGELO & DI MONDA
A LIMITED LIABILITY PARTNERSHIP

I am open to any other parameters suggested by you in writing. The parameters suggested by me in this letter will remain open for the next 30 days, at which time all settlement negotiations will be withdrawn.

Very truly yours,

ANGELO & DI MONDA, LLP


Christopher E. Angelo

CEA/csh

ORIGINAL

JS 44
(Rev. 07/89)

CIVIL COVER SHEET

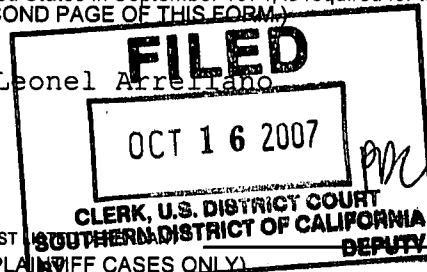
The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE SECOND PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Progressive West Insurance Company, an
Ohio Corporation

DEFENDANTS

Bun Bun Tran, Leonel Arrellano



(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Cuyahogo
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

Robie & Matthai
500 South Grand Avenue
Suite 1500
Los Angeles, CA 90071
213-706-8000

ATTORNEYS (IF KNOWN)

'07 CV 1999 JAH (POR)

II. BASIS OF JURISDICTION (PLACE AN 'X' IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (PLACE AN 'X' IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | PT | DEF | | PT | DEF |
|---|----------------------------|---------------------------------------|---|---------------------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business in This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business in Another State | <input checked="" type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)

DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

Declaratory Judgment.

28 U.S.C. section 1332; 28 U.S.C. section 2201

V. NATURE OF SUIT (PLACE AN "X" IN ONE BOX ONLY)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Medical Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (13958) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reappointment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commercial/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 860 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes <input type="checkbox"/> 890 Other Statutory Actions

VI. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removal from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ YES ☒ NO

VIII. RELATED CASE(S) IF ANY

(See instructions)

JUDGE

Docket Number

DATE

SIGNATURE OF ATTORNEY OF RECORD

October 15, 2007

JAMES R. ROBIE

#143598 \$350 KO 10/16/07

**UNITED STATES
DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
SAN DIEGO DIVISION**

143598 - KD

**October 16, 2007
16:22:38**

Civ Fil Non-Pris

USAO #: 07CV1999

Judge.: JOHN A HOUSTON

Amount.: \$350.00 CK

Check#: BC 15834

Total-> \$350.00

**FROM: CIVIL FILING
PROGRESSIVE WEST INS. CO. V.
BUN BUN TRAN, ET AL**